

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It appears to Examiner that Applicant has written the specification by means of example and does not set forth an explicit mode of operation and use. Particularly, it is disclosed/claimed that the remote control unit controls the valve independently from any inhalation activity and that the system excludes any means for automatically adjusting the gas flow according to the level of physical activity of the individual. However, in paragraph [0049]-[0052] the use of the system in conjunction with a means for monitoring an individuals oxygen level or physical activity is disclosed. Furthermore the details of such for monitoring an individuals oxygen level or physical activity is merely disclosed by means of example (see paragraphs [0050]-[0051]) and the explicit details to make and/or use the invention is not disclosed. Also, Applicant set forth three different user interfaces (again disclosed merely by example in paragraph [0048]) that utilize a button selection feature (Fig. 3A), a digital display (Fig. 3B), and a dial interface (Fig. 3C) and has failed to set forth the explicit details to make and/or use the user interfaces in conjunction with the system schematically shown in Figure 2. Also, Applicant has set forth use of the system with voice

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recognition (see the disclosure set forth by example in paragraph [0045]) and has failed to set forth the explicit details to make and/or use the voice recognition system in conjunction with the system schematically shown in Figure 2. Furthermore, Applicant has set forth the valve of the system as being manually operable when an AC source is inoperative. However, the disclosure fails to disclose the explicit details to make and/or use this feature in conjunction with the system.

Response to Arguments

Applicant's arguments filed 11/5/07 have been fully considered but they are not persuasive. In regard to Applicant's argument with respect to the systems exclusion of automatic adjustment of gas flow (page 4, line 17 to page 5, line 2), Examiner fails to see how the described manual adjustment addresses the adjustment of gas flow in conjunction with an individuals physical activity or oxygen level. In regard to Applicant's argument with respect to the enablement of an individuals oxygen level or physical activity (page 5, lines 3-21), Examiner acknowledges that the cited '189 and '490 patents address oxygen saturation measurements and oxygen sensors. However, explicit details as to how these features would be incorporated into the instant device is lacking such that one of ordinary skill could make such device. In regard to Applicant's argument with respect to the three different user interfaces shown in Figs. 3A-3C (page 5, line 22 to page 6, line 17), Examiner acknowledges that there may be textbooks written on microprocessor systems and that the selection of appropriate microprocessors depend greatly on it CPU, memory timer(s), port(s), software and other components. However, none of these admissions address explicitly how one of ordinary skill would make such remote devices and

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incorporate such teachings in the instant device. In regard to Applicant's argument with respect to the enablement of a voice recognition system (page 6, line 23 to page 7, line 2), Examiner acknowledges that the admission of the passage in PC Magazine discussed voice recognition systems. However, the admission fails to address explicitly how one of ordinary skill would make such voice recognition system and incorporate such teachings in the instant device. . In regard to Applicant's argument with respect to the enablement of a system that makes the valve manually operable when an AC source is inoperative (page 7, line 3 to page 7, line 10), Examiner acknowledges that the '224 patent discusses a solenoid valve operable with a bypass valve. However, the disclosure fails to address explicitly how one of ordinary skill would make such feature and incorporate such teachings in the instant device. Examiner wants to summarize and reiterate his position in that Examiner acknowledges that there exists disclosures addressing features in the instant claimed device (discussed supra), but Examiner finds that Applicant merely introduces such disclosure by mere example and fails to explicitly show how one of ordinary skill in the art would incorporate such features in order to make the instant device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Steven O. Douglas/
Primary Examiner
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SD
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